

RQ-227



James F. Hury, Jr.  
House of Representatives

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October 3, 1991

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The Honorable Dan Morales  
Attorney General of Texas  
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COPY FOR YOUR  
INFORMATION

Opinion Committee

Dear General Morales:

As you may know, a dispute regarding the investment of county funds has surfaced in some regions of our state. I would truly appreciate it if you would answer the following questions in order to clarify some Texas statutes and court decisions as they apply to county funds management and investment:

1. In counties with a county treasurer, may a commissioners court direct an investment officer or employee appointed pursuant to Section 3, Ch. 810, Acts of the 66th Legislature, Regular Session, 1979 (Art. 4413(34c), V.T.C.S.), to deposit, withdraw, or invest the funds belonging to the county?

2. Through its adopted investment policy or other official act, may a county commissioners court commission an investment officer or employee pursuant to Section 3, Ch. 810, Acts of the 66th Legislature, Regular Session, 1979 (Art. 4413(34c), V.T.C.S.), to direct the county treasurer to withdraw and invest county funds in a manner provided in Section 116.112, Local Government Code?

3. Where a commissioners court chooses to exercise its prerogative to direct investments of county funds as set out in Sections 116.111 and 116.112, Local Government Code, may the court delegate to either one, two, or three of its members sole discretion in making daily investment decisions and issuing directions, even though the court has not officially authorized the individual investment decisions, including the precise descriptions of investments; i.e., kinds of instruments, terms, yields, discounts or premiums, and amounts?

I have enclosed a briefing memo for your information. I thank you in advance for your prompt attention to this matter. Please do not hesitate to contact me if I can provide further information. Best regards.

Yours very truly,

James F. Hury, Jr.

Enclosure

ACCOMPANIED BY ENCLOSURES -  
FILED SEPARATELY

MEMORANDUM BRIEF

TO: Hon. Dan Morales  
General and Staff Opinion Committee

FROM: Richard Kirkpatrick for County  
Treasurers of Texas

DATE: September 29, 1991

RE: Attorney General-Opinion Request Regarding the  
Directing of County Investments

ISSUE I

May a Commissioners Court delegate to an employee of the Commissioners Court the court's authority 1) to designate the character and amounts of county funds to be deposited in demand and time deposits and 2) to direct the county treasurer to otherwise invest county funds?

DISCUSSION

Plainly, the language of Rev.Tx.L.Gov't C., sec's 116.111 and 116.112, permits but does not compel the commissioners court to determine the character and amounts of funds for time deposits and other lawful county investments, but whether the court may either yield or delegate that prerogative to one other than the county treasurer seems highly doubtful, for the authority of a commissioners court over county government is limited severely by the Texas Constitution and by Texas statutes and their judicial review. This rule of limitation was first announced in Mills County v. Lampasas Co., 40 S.W. 403 (1897), and cited in Canales v. Laughlin, 214 S.W.2d 451 (Tx.S.C. 1948), where the court said,

statute construction: "The general follows the specific."

(a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Significantly, other special statutory provisions assign to the county treasurer the Art. 4413(34c), V.T.C.S., duties of transferring, depositing, withdrawing, and investing of county funds. Except when changing depositories, "transfer" as used in 4413(34c) appears too nebulous to have precise meaning, but if it means moving funds from one bank account to another or to an investment security, then it is subsumed within the acts constituting deposits, withdrawals, and investments. The controlling special statutory provisions are found in Rev. Tx. L. Gov't C., sec's. 133.021, (a) and (b), and sec's. 116.112 and 116.113 (a), recited above.

In sec. 113.021's predecessor statutes, the Legislature unmistakably demonstrated its intent. Rev. Tx. Civ. Stat., art's. 1656a and 1709a (by reference) stated in part,

....All of the fees, commissions funds, and moneys herein referred to shall be turned over to the County Treasurer by such officer as collected, and such money shall be deposited in the county depository in a special fund to the credit of such officer and draw interest for the benefit of the county....

And even though the statute's recodification and disposition into the Local Gov't Code lack the same exacting language, the implication still reposes there. This is especially true, since

commanded to make decisions regarding investment of county funds, while a duty to invest county funds is created in the county treasurer. And, just as clearly, a commissioners court may not delegate judicial decisions to a functionary, irrespective of the title denominated. Additionally, neither the Texas Constitution nor Texas statutes appear to contemplate that a Constitutional Officer shall serve under the direction of a court functionary; however, where a commissioners court chooses not to exercise its authority to direct investments, the county treasurer is not relieved of the duty to invest county funds; neither may the court refuse to adopt a "County Investment Policy" required by "The Public Funds Investment Act", Rev.Tx.Civ.Stat., art. 842a-2 as cited in Rev.Tx.L.Gov't C., sec. 116.112.

#### ISSUE II

May a commissioners court delegate to one of its members sole discretion in making daily investments, and issuing directions decisions pursuant to Rev.Tx.L.Gov't C., sec's. 116.111 and 116.112?

#### DISCUSSION

Article V, Section 18 of the Texas Constitution provides that the commissioners court "shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed." And where a right is conferred or obligation imposed on commissioners court, it has implied authority to exercise a broad discretion to accomplish the